

DEAL DIARY: SKADDEN, WACHTELL ON UNION PACIFIC-NORFOLK SOUTHERN TIE-UP

Union Pacific uses Skadden, Covington, Morgan Stanley and Wells Fargo on an \$85 billion cash-and-stock deal for Norfolk Southern, which taps Wachtell, Sidley and BofA.

BY DAVID MARCUS

Norfolk Southern Corp. (NSC) used Edward D. Herlihy and Jacob A. Kling of Wachtell, Lipton, Rosen & Katz for counsel on an agreement to sell to Union Pacific Corp. (UNP) for \$85 billion in cash, stock and assumed debt announced on Tuesday, July 29 in a merger of railroad companies that's the largest U.S. deal signed up this year.

Steven A. Baronoff and Loli Wu at BofA Securities Inc. gave financial advice to Norfolk Southern, where chief legal officer Jason A. Morris is on the deal. The Atlanta-based company turned to Raymond Atkins and Carrie C. Mahan of Sidley Austin LLP for transportation counsel.

Norfolk Southern CEO Mark George joined the company as CFO in 2019 from United Technologies Corp. He was the CFO for Otis Elevator Co. and the Carrier Corp. from 2008 to 2019. Wachtell advised longtime client United Technologies when it spun off both companies in 2020. Carrier Global Corp. (CARR) and Otis Worldwide Corp. (OTIS) are both publicly traded companies, while United Technologies merged with Raytheon Technologies Corp. to form RTX Corp. (RTX) in 2020.

Omaha-based Union Pacific used Paul T. Schnell, Brandon Van Dyke and Dohyun Kim of Skadden, Arps, Slate, Meagher & Flom LLP for corporate counsel and Michael L. Rosenthal and Derek Ludwin of Covington & Burling LLP for transportation counsel.

Nelson Walsh and Kristin Lindia at Morgan Stanley & Co. LLC and David A. DeNunzio and Elizabeth Cabot at Wells Fargo & Co. gave financial advice to Union Pacific, where chief legal officer Christina Conlin is on the deal.

Union Pacific will pay \$88.82 in cash and one of its shares for each Norfolk Southern share, consideration worth \$320 per target share based on the closing price buyer's stock as of July 16, a day ahead of when news of a possible deal broke. That price reflects a 25% premium to the target's 30-trading day volume weighted average price on July 16.

The companies hope to close the deal by early 2027, pending approvals from the Surface Transportation Board (STB) and both sets of stockholders. The companies expect to file their application for approval of the deal with the STB within six months.



Wachtell's Jacob Kling, Skadden's Brandon Van Dyke, Covington's Michael Rosenthal and Sidley's Ray Atkins

Activist campaigns at both Union Pacific and Norfolk Southern appear to have played a role in the larger railroad's deal to acquire its smaller rival. In November, Norfolk agreed in a settlement with Ancora Management LLC to appoint a mutually selected director and enhance the board's gender diversity and executive leadership experience. In May 2024, Ancora succeeded at electing three of seven dissident director candidates to Norfolk Southern's board in a heated contest that went the distance.

Meanwhile, activists have been involved at Union Pacific and appear to have helped install the railroad's CEO, Jim Vena. In February 2023, activist Soroban Capital Partners LP launched a campaign seeking to install Vena, an ex-Union Pacific COO, as chief executive. Vena joined as Union Pacific's CEO in August 2023.

The transaction, too, could spark another mega-deal. The deal announcement could spur Warren Buffett's Berkshire Hathaway-owned BNSF Railway Co. to bid for Norfolk or make a play for CSX Corp. (CSX). The Deal reported Monday, citing sources, that CSX retained Goldman, Sachs & Co. as a financial adviser to consider M&A. ■

—Ronald Orol contributed to this report.